IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

T.R.C.No.26 of 2002

ORDER DATED 28.10.2000 IN TA.1171/1990 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH II, ERNAKULAM

.....

REVISION PETITIONER/APPELLANT/REVENUE:-

STATE OF KERALA, REPRESENTED BY THE
DEPUTY COMMISSIONER, TAXES, ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER (TAXES) SRI.V.V.ASOKAN

RESPONDENT/RESPONDENT/ASSESSEE:-

M/S. BROOKE BOND INDIA LIMITED,
(HINDUSTAN LEVER LIMITED), W.ISLAND, COCHIN-3.

BY ADV. SRI.ANIL D. NAIR

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 26/06/2007, ALONG WITH T.R.C.NO.72 OF 2002 & CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.Dattu,C.J. & K.T.Sankaran,J.

T.R.C.Nos.26/2002, 72/2002, 122/2002, 123/2002 & 124/2002

Dated, this the 26th day of June, 2007

ORDER

H.L.Dattu,C.J.

Since common question of law and facts are involved in all these Tax Revision Cases, they are clubbed together, heard and disposed of by this common order.

2. These Tax Revision Cases arise under the provisions of the Kerala General Sales Tax Act ("KGST Act" for short). In these Tax Revision Cases we are concerned with assessment years 1987-88, 1990-91, 1991-92, 1992-93 and 1993-94.

3. The primary question that arises for our consideration in these Tax Revision Cases is whether sale of Bru Coffee is taxable under Entry 53 of the First Schedule to the Act or is it under Entry 77 of the First Schedule to the Act.

4. The respondent-assessee is a dealer under the provisions of the KGST Act and Central Sales Tax Act ("CST Act" for short). The business activity of the respondent-assessee is the sale of Bru Coffee.

5. The assessee had filed its annual returns before the assessing authority, *inter alia* claiming that its taxable turnover requires to be brought under Entry 77 of the First Schedule to the Act. That has been negatived by the assessing authority and brought it under Entry 53 of the First Schedule to the Act. Aggrieved by the said order, the assessee had carried the matter by way of first appeal before the first appellate authority. The appellate authority had modified the orders passed by the assessing authority, but still of

the opinion that the coffee sold by the assessee would fall under Entry 53 of the First Schedule to the Act. That is how the assessee was before the Tribunal.

6. The primary contention of the assessee before the Tribunal was that the Bru Coffee is admixture of coffee and chicory and, therefore, the sale of the Bru Coffee requires to be taxed under Entry 77 of the First Schedule to the Act. The contention of the assessee was found favour by the Tribunal. Aggrieved by the orders so passed by the Tribunal, the Revenue is before us in these Tax Revision Cases.

7. The Revenue has raised the following question of law for our consideration and decision. The question reads as under:

> "Question raised for decision of the High Court is whether the Tribunal justified in coming to the conclusion that Bru Coffee is an article coming under entry 77 taxable at 6% and not an article coming under entry 53 of Schedule-I taxable at 10%".

8. Sri.V.V.Ashokan, learned Special Government Pleader (Taxes) would submit that the coffee sold by the assessee is Bru Coffee and Bru Coffee is a brand name. Therefore, for the purpose of levying tax under the KGST Act, the same requires to be brought under Entry 53 of the First Schedule to the Act. Therefore, he submits that the Tribunal was not justified in holding that the Bru Coffee sold by the assessee would fall under Entry 77 of the First Schedule to the Act.

9. Sri.Anil D.Nair, learned counsel appearing for the respondent-assessee would ably justify the impugned order passed by the Tribunal. He also places reliance on the observations made by this Court in the case of Brooke Bond India Limited v. State of Kerala [(1992) 84 STC 334].

10. In our view, the matter can be decided on the first principle without reference to the case law cited by the learned counsel for the respondent-assessee.

11. We are concerned with the assessment years, as we have already noticed, 1987-88 and onwards. The Entry relevant for the purpose of these assessment years are as under:

Entry 36 - Coffee but not including coffee drink and French coffee.

Entry 37 - Coffee powder sold under brand name.

Entry after 1.7.1987, in so far as coffee is concerned, was Entry 52, Entry 53 and Entry 77. Entry 52 speaks of coffee but not including coffee drink and French coffee. Entry 53 speaks of coffee powder sold under brand name. Entry 77 speaks of French Coffee (admixture of coffee and chicory).

12. A close reading of the aforesaid Entries would indicate the following: Entry 52 speaks of coffee but not including coffee drink and French Coffee. Entry 53 specifically states that coffee powder if it is sold under a brand name. However, Entry 77 speaks of French Coffee (admixture of coffee and chicory).

13. It is an undisputed fact that the Bru Coffee is nothing but an admixture of coffee and chicory.

14. If for any reason the assessee had effected sale of coffee powder simplicitor under a particular brand name, then its taxable turnover would have been brought under Entry 37 of the First Schedule of the Act. But in the present case what is sold by the assessee is an admixture of coffee and chicory. Certainly that would fall under Entry 77 of the First Schedule to the Act.

15. Keeping these Entries in view, in our view, the Tribunal was justified in holding that what is sold by the assessee is an admixture of coffee and chicory and, therefore, it would fall under Entry 77 of the First Schedule to the Act.

16. In view of the above, we are of the opinion that the Tribunal was justified in holding that Bru Coffee is an admixture of coffee and chicory and, therefore, it would fall under Entry 77 of the First Schedule to the Act. Therefore, the question of law framed by the Revenue requires to be answered against the Revenue and in favour of the assessee.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-